

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GERHARD FISCHER

Appeal No. 2001-0844
Application No. 08/736,330

ON BRIEF

Before ABRAMS, McQUADE, and NASE, Administrative Patent Judges.
NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 and 5. Claims 2 to 4 and 6 to 8 have been allowed. No claim has been canceled.

We REVERSE.

BACKGROUND

The appellant's invention relates to a braking control system for a motor vehicle (claim 1) and a method of controlling brake operation of a motor vehicle (claim 5). A copy of the claims under appeal is set forth in the appendix to the appellant's brief.

Claims 1 and 5 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 5,632,535 to Luckevich et al. (Luckevich).

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejection, we make reference to the final rejection (Paper No. 11, mailed July 19, 1999) and the answer (Paper No. 17, mailed August 11, 2000) for the examiner's complete reasoning in support of the rejection, and to the brief (Paper No. 16, filed May 2, 2000) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and

claims, to the applied prior art reference to Luckevich, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

To support a rejection of a claim under 35 U.S.C. § 102(e), it must be shown that each element of the claim is found, either expressly described or under principles of inherency, in a single prior art reference. See Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

The examiner in the answer (p. 3) and the appellant in the brief (pp. 8-9) disagree as to the correct meaning that should be accorded the phrase "partial braking" as used in claims 1 and 5. In our view, it is well settled that during examination a phrase in a claim must be interpreted as broadly as its terms reasonably allow unless the appellant has provided a clear definition in the specification. See Multiform Desiccants, Inc. v. Medzam, Ltd., 133 F.3d 1473, 1477, 45 USPQ2d 1429, 1432 (Fed. Cir.

1998); Intellicall, Inc. v. Phonometrics, Inc., 952 F.2d 1384, 1388, 21 USPQ2d 1671, 1674 (Fed. Cir. 1994); In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989). Thus, the examiner's position that while the appellant may be his own lexicographer that the appellant must specifically state that all other meanings are excluded is without merit.¹ Therefore, since the appellant has provided a definition of "partial braking" on page 1, lines 21-24, of the original specification, and that definition is not repugnant to its well known usage, we accept the appellant's definition as the appropriate definition to the phrase "partial braking" as used in claims 1 and 5.

The appellant argues (brief, pp. 6-9) that Luckevich does not disclose the subject matter of claims 1 and 5. We agree. In that regard, Luckevich does not disclose either (1) a symmetrical reduction of brake pressure being carried out on both wheels of an axle when the signal proportional to the lateral acceleration is larger than a first lower threshold

¹ We note that the examiner has cited no authority in support of this position.

value, and partial braking of the vehicle is implemented simultaneously therewith as recited in claim 1; or (2) when a lateral acceleration is detected during an operation of the vehicle brakes in a partial braking mode, implementing a symmetrical reduction of brake pressure on both wheels of an axle of the vehicle when the lateral acceleration signal exceeds a first lower threshold value as recited in claim 5. We have reviewed the patent to Luckevich and fail to find any disclosure meeting the above-noted limitations of claims 1 and 5 and the examiner has not provided any discussion as to how Luckevich is readable on the above-noted limitations of claims 1 and 5.

Since all the limitations of claims 1 and 5 are not found in Luckevich for the reasons set forth above, the decision of the examiner to reject claims 1 and 5 under 35 U.S.C. § 102(e) is reversed.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1 and 5 under 35 U.S.C. § 102(e) is reversed.

REVERSED

NEAL E. ABRAMS)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
JOHN P. McQUADE)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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JEFFREY V. NASE)	
Administrative Patent Judge)	

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EVENSON MCKEOWN EDWARDS & LENAHA
1200 G STREET NW
SUITE 700
WASHINGTON, DC 20005

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